

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

January 10, 2002

The monthly meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on January 10, 2002, at 10:00 a.m., at the Oakland Hilton, located at 1 Hegenburger Road, Oakland, CA.

The following members of the Committee were present at the meeting:

David Bertenthal
Peter Bronson
Bruce Emard
Tracy Schweitzer
Geraldine Valdez
Ben Young

The following members appeared by telephone.

Lou Cisz
Judy Gibbs
Rob Harris
Lynn Ernce
Radmila Fulton
Steven Johnson
Perry Landsberg
Gregory Lunt
Dean Kirby
Kathy Phelps
David Shemano

Ben Young called the meeting to order at approximately 10:00 a.m.

Approval of Minutes

The minutes of the November 29, 2001 meeting were unanimously approved.

Program for Third Annual Spring Meeting (Business Law and IP sections) - La Costa, May 2002 (same weekend as CBF annual conference)

Coordinator- Kathy Phelps;

Panelists; Ron Leibow and John Dalhberg

Topic: "Latest on interface of bankruptcy law with intellectual property law and commercial law."

Deadline for materials: ???

Confirmed Program for Winter Section Institute - San Diego, January 2002

All necessary forms filled out, draft of materials transmitted to State Bar. Materials being revised. Panel: Rob Harris, Steve Johnson, Dean Kirby and Radmila Fulton.

Topic: "Bankruptcy Reform Legislation Forecasting a Cold Winter for Debtors"

Reform history

Reform status

Look at problems with proposal - compare to current law

Swap agreements

Small business

Consumer

Netting

(Coordinator - Dean Kirby) - 2 hours

Liaison to Ad Hoc Committee Re ADR (Peter Bronson)

Nothing is happening. Decided to remove this item from the committee agenda.

Executive Committee Constituency/Outreach Project (Rob Harris, Steve Johnson)

Steve Johnson wants to be removed from project.

Web Site Status Report (Steve Johnson, Rob Harris)

Steve Johnson -

- a) posting current minutes
- b) link to programs we are doing
- c) program materials - post after program
- d) coordinated calendar of upcoming events
- e) TLS to send Steve the Oct/Nov minutes for posting on website

Progress Reports on New and Current Projects

- a) Legislation to Automatically Re-index California Exemptions in Amounts and at Times Periodically Established Under the Bankruptcy Code (Rob Harris)

Rob wants go back to re-index personal property only grub stake. Leave out real property.

Eric - had thought Chapter 7 trustees would oppose.

Proposal - maintain status quo, relative, real economic terms.

Committee: Vote - approval - unanimous 1/17/02 proposal

- b) CLRC Items of Interest

- i) Assignment of Benefit of Creditors (Geraldine Valdez)

Nothing happening. 2002 has some vague debtor/creditor issues.
Most has to do with assign.

- ii) Municipal Bankruptcies (Ben Murphy) - not present

- iii) Attorneys Fees to Prevailing Parties (Tom Phinney) - not present

- c) Coordinate with LABF on proposing new procedures for California Bankruptcy Courts to become more user friendly (Ben Murphy, Marc Cohen)

Ben Murphy: per Marc Cohen - Judge Zurzolo apparently some new local rule coming out that has been approved by Bankruptcy Court. The District Court is reviewing for approval. May be general order rather than local rule. Very secretive. Keep eye out, if there is a public comment period, the committee will need to review to see if we should comment.

d) Model Real Estate Order - Sale Order

- ◆ Ben Young - Northern - sent to Fred Holden - Northern District Bench Bar.
- ◆ Marc Cohen - looking into Central District. Suggested order be sent to:
Judge Carroll - Chair of Rules Commission
Judge Mund - Chief Judge

Send to chairs of Los Angeles/Orange County Bankruptcy forum.

- ◆ Geraldine Valdez - Southern
- ◆ Judy Gibbs - Eastern District has no bench/bar committee. Handed it out a Clerk's Advisory Committee.

Going to split order because Judge Klein is adamant. Orders do not contain findings of fact.

New Projects

- a) ILC Comment re Attorney Liability Provisions of the Bankruptcy Bill
Judy Gibbs) - Judy still working on memorandum
- b) Further Proposed Changes to the Rules of Bankruptcy Procedure and
Requests for Comments - Petition Preparer

Central District report - Petition preparers are BAD.

Recommendations: Someone, state or federal needs to be looking at unauthorized practice of law.

LA Times article - Petition preparer response: Turf war between petition preparer and consumer bankruptcy attorneys.

Report recommends debtors go to pro bono agencies.

Price is consideration - petition preparers are finding ways to increase cost by charging costs.

Attorney fees: \$800-\$2500

Petition preparer cap: \$175 - Modest; \$125 - SF.

Northern District Guidelines

- i) Educate debtors what petition preparer can do

ii) Capped fees

iii) \$125

Central District Report

Petition preparers are not the solution to problem of high cost legal services.

Recommends petition preparers be prosecuted, guidelines be adopted capping fees, explaining what they are allowed to do.

Is there something the Committee should be doing? (i.e., circulate report, encourage pro bono activity)

Problem - State Bar has been reluctant to take on paralegals.

Dean - Law needs to be changed, we need to propose legislation to put these people out of business.

Problem - Fairly obvious, State Bar Board of Governors executive committee do not want to foreclose legal assistance to the poor.

Ben -

1. Comment - existing rules/legislation - federal level

2. State Level - proposal

Narrow focus - unauthorized practice of bankruptcy law

Present horrible scenarios

Pro bono as substitution into market

Steve - Committee should review LA report and bring thoughts to next meeting. Look for solutions other than just stopping unauthorized practice. *www.lacba.org* (commercial law and bankruptcy section) - copies of report

c) Proposal to amend the provisions in the Bankruptcy Code for the netting of financial contracts.

Netting Provisions - Lynn Ernce reporting not a lot of controversy; updates bankruptcy code to recognize various entities/ contracts.

Question - will legislation pass on its own or as part of Bankruptcy Reform Act? Is it really non-controversial? May contain provisions regarding sales to bankruptcy remote entities.

Netting is still jammed up with rest of Bill. A few are trying to get it apart separately.

Ben - should we comment?

Lynn - to speak with Ben Murphy and report back so we can decide if controversial or not and whether we should comment.

Education, Programs and Publications

- a) Article for Business Law News

Legislative Liaison Report (Lynn Ernce)

No other additional legislation.

New Items

- 1) State Bar Annual Meeting - October 2002 - Monterey

February 20, 2002 - deadline to notify executive committee we want to do panel

1. Judy Gibbs/Tom Phinney - "issues arise when litigant files bankruptcy"
2. Geraldine Valdez /Peter Bronson - volunteered for second panel. Something along the lines of "bankruptcy 101"
3. Judy Gibbs/Geraldine Valdez - to respond to Susan Orloff re panels by February 20, 2002

- 2) Corporate Committee - Neil Wertlieb, Chair - wants our help with legislation regarding corporations converting to LLC or partnership. Corporation Committee trying to streamline conversion provisions.

Snag - someone wants requirements of notice of conversion to other claimants and creditors.

Problem -

1. definition of other claimants
2. statute does not pay what happens if fails to give notice

Ben - Creditors' rights are really only affected if partnership with personal liability converts to limited liability entity. Corporation Committee concedes in that instance notice should be given.

Ben told Neil -

1. we need to see legislation and understand
2. Neil volunteered to come to our next meeting

Peter to talk to Neil.

3) Judy - Should we consider now applicants for next year, i.e., what specific target group, i.e., trustee; in-house bank lawyer; diversity; large firm; small firm; geographic diversity; north/south.

Meeting adjourned: next meeting will be February 21, 2001 in Los Angeles.